IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Luis E. LUCIANI, Jr. et al. §	Confirmation No.:	6650
Serial No.:	10/729,676 §	Group Art Unit:	2451
Filed:	12/05/2003 §	Examiner:	John B. Walsh
For:	System For Establishing §	Docket No.:	200314489-1
	Hardware-Based Remote §		
	Console Sessions And §		
	Software-Based Remote §		
	Console Sessions §		

REPLY BRIEF

Mail Stop Appeal Brief – Patents　　　　　　　　Date: October 29, 2009
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

 In response to the Examiner's Answer dated September 8, 2009, Appellants submit this Reply Brief for further consideration by the Board. In submitting this Reply Brief, Appellants reiterate the arguments made in the Appeal Brief filed on May 21, 2009.

Claims 8 and 11-14

 In his Answer, the Examiner admits that he erred in rejecting claims 8 and 11-14 using Publication. Answer, pp. 12-13. Appellants thank the Examiner for acknowledging the patentability of these claims over Publication.

Claims 1-6 and 15-19

 In his Answer, the Examiner focuses on the final limitation of claim 1, which requires a "system management processor [that] is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions." In essence, the Examiner argues that Publication does indeed teach this limitation because Publication provides remote console session capabilities both when the OS is functional and when the OS is not functional. *See, e.g.,* p. 8.

The Examiner continues to err in maintaining this rejection. Appellants maintain that Publication fails to teach both hardware- and software-based remote console sessions, and Publication certainly fails to teach selectively establishing these sessions. In an attempt to refute this argument, the Examiner points out that Publication teaches an OS. The Examiner argues that when the OS is non-functional, a hardware-based session is used, and when the OS is functional, a software-based session is used. For the Examiner's argument to be valid, it must show why a hardware-based session is tied to the absence of an OS and why a software-based session is tied to the presence of an OS. The Examiner does attempt to tie hardware-based sessions to the presence of an OS and software-based sessions to the absence of an OS, but these attempts contain logical fallacies:

(1)   Referring to paragraph 0022 of Appellants' specification, the Examiner points out that hardware-based sessions "may not need software or OS assistance." Answer, p. 8. This statement, however, does not mean that a hardware-based session is absent when an OS is present or that a hardware-based session is present when an OS is absent, as the Examiner appears to believe. It simply means that a hardware-based session <u>can</u> function without the OS. Thus, the Examiner's argument fails to tie hardware-based sessions to the presence or absence of an OS.

(2)   The Examiner cites paragraph 0021, which reads, "[a] software-based remote console session may require, among other things, the server 100 to be running an operating system ("OS") and possibly various other software programs." The Examiner takes this statement to mean that "if the OS is running . . . then a software-based session would be taking place." Answer, p. 8. Again, the Examiner makes a logically fallacious argument. The specification, as quoted above, states that an OS may be <u>necessary</u> to run a software-based session. It does not say that the presence of an OS is <u>sufficient</u> to run a software-based session, as the Examiner appears to believe. Thus, the Examiner's argument fails to tie the presence or absence of an OS to software-based sessions.

Besides the fact that the Examiner has failed to establish where Appellants, as lexicographers, tied the presence or absence of an OS to the type of remote console session, the Examiner also has failed to establish where Publication ties the presence or absence of an OS to the type of remote console session.

In summary, Appellants maintain that Publication fails to disclose selectively establishing hardware- and software-based remote console sessions. The Examiner's rebuttal to this argument contains multiple logical errors and, thus, fails to demonstrate where Publication teaches hardware- and software-based remote console sessions, much less the selective establishment of such sessions. Appellants respectfully ask the Board to reverse the Examiner's rejection of these claims.

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

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